UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1919

September Term, 2014

WADE GAYLE

v.

STATE OF MARYLAND

Wright,
Arthur,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: July 26, 2016

In 1999 and 2006, appellant Wade Gayle pleaded guilty to charges of possession with intent to distribute heroin. In 2013, Gayle filed a petition for writ of error coram nobis, seeking to vacate the convictions arising from those pleas. He argued that he had not knowingly and voluntarily entered the pleas and that he had suffered adverse collateral consequences because the convictions resulted in an enhanced sentence after a later conviction for a federal firearms violation. The circuit court denied Gayle's petition, and he took a timely appeal.

QUESTION PRESENTED

On appeal, Gayle presents one question: Did the circuit court err in denying his petition for writ of error coram nobis? Because we see no error, we affirm.

BACKGROUND

A. The 1999 Plea Hearing

After Gayle pleaded guilty in 1999, the circuit court sentenced him to five years' incarceration, but suspended all but the time that he already served. The court placed Gayle on three years of probation through the drug treatment court, but in 2002 he violated his probation and wound up serving the balance of his sentence in jail. Beyond this, the specifics of the 1999 plea remain unverified, as Gayle has been unable to produce a hearing transcript.

B. The 2006 Plea Hearing

In 2006 Gayle faced charges in two separate cases that arose from two separate arrests. At a plea hearing in October 2006, the circuit court accepted guilty pleas from

Gayle and three other men, one of whom was Gayle's co-defendant in one of the two cases against him.

In Gayle's presence, the circuit court judge had the prosecutor read the charges against him: "possession with intent to distribute heroin, count one[,]" and "[c]ount one, possession with intent to distribute heroin." When the judge asked Gayle's counsel about the nature of the plea, counsel stated: "My understanding of the plea is that my client will receive a two[-]year sentence that gets dated back to the date of his arrest." Gayle's counsel confirmed that the two-year sentence would apply to both charges.

After Gayle and the other men were sworn, the court ran through some preliminary identifying questions, addressing the men as individuals. The judge instructed the men that they "must speak loudly" because he "must, in fact, make a determination whether or not this plea is freely and voluntarily given . . . [a]nd . . . whether or not it should be accepted by the Court." He added: "[If] I do not hear you, I will reject your plea."

The judge asked Gayle and the other men whether they understood that they were pleading guilty to the charges that had been brought against them. Gayle and the others each answered, yes.

The judge asked Gayle and the others whether they understood that they had an absolute right not to plead guilty. Gayle and the others each answered, yes.

The judge exhaustively explained the rights that Gayle and the others would surrender by pleading guilty to the charges against them, including their right to be tried by a 12-person jury that could convict them only if it reached a unanimous verdict; their

right to a bench trial if they did not wish to elect a jury trial; their right to confront the and cross-examine the witnesses against them and to present their own witnesses at trial; their right to compulsory process to compel witnesses to testify; their right against self-incrimination and to refuse to testify in the State's case against them; their right to file pre-trial motions, including motions to suppress evidence; and their right to an automatic appeal of any conviction that followed a trial. On every occasion on which he explained a right that Gayle and the others would surrender, the judge asked them if they understood what he had said. On every occasion, Gayle and the others each answered, yes.

The judge informed the men of the maximum sentences that they faced for the charge of possession with intent to distribute heroin or cocaine: 20 years of incarceration and a $25,000 fine. The judge also informed the men that they faced mandatory minimum sentences of 10 years without parole if they had one prior conviction, 25 years without parole if they had two prior convictions, and 40 years without parole if they had three prior convictions. The judge asked each of the men if they understood what he had said, and Gayle and the others each answered, yes.

The judge explained that the defendants retained the right to ask for leave to appeal notwithstanding their pleas and the various bases upon which they could do so. He asked Gayle and the others whether they understood that right, and each answered, yes.

The judge explained some of the legal consequences that might attend the guilty pleas. He asked Gayle and the others whether they understood that the guilty plea would

result in an automatic violation of parole or probation and that he would have nothing to do with what might happen as a result of the violation. Gayle and the others replied, yes. The judge also asked Gayle and the others whether they understood that the guilty pleas could cause their deportation if they were in the country on a temporary or permanent visa. Gayle and the others replied, yes, to both questions.

The judge asked the men how old they were (Gayle replied, "26"); how far they had gone in school (Gayle replied, "9th"); whether they could read and write the English language (Gayle replied, "Yes"); whether they understood everything that had been explained to them so far (Gayle replied, "Yes"); whether they currently were or ever had been under any psychiatric care (Gayle replied, "No"); and whether they were under the influence of any narcotic substances or alcoholic beverages (Gayle replied, "No").

In addressing the voluntariness of the pleas, the judge asked Gayle: "[H]as anyone threatened you or forced you to plead guilty?" Gayle answered, "No." He asked: "Are you doing this on your own free will, sir?" Gayle answered, "Yes." The judge also asked: "Are you pleading guilty because you're in fact guilty of the charges being called, sir?" Gayle again answered, "Yes."

A bit later, the judge asked Gayle whether he had had an opportunity to discuss his case and his plea with his attorney? Gayle replied, "Yes." The judge asked: "Has she answered your questions fully to your satisfaction?" Gayle replied, "Yes."

In response to the judge's question about whether he was satisfied with the representation that he had received from his attorney and her office, Gayle replied, "Yes." In response to the judge's next question about whether he wished the court to accept the

guilty plea that his attorney had given, Gayle again replied, "Yes." On that basis, the court found Gayle's plea to have been "freely, voluntarily, [and] intelligently given."

At that point, the prosecutor recited the factual bases for the charges that would have been adduced at trial.

On the first charge, the prosecutor recounted that on December 14, 2004, the police observed Gayle and his co-defendant engaging in several hand-to-hand exchanges of small objects, packaged like controlled dangerous substances, for cash. The police obtained and executed a search warrant of Gayle's nearby residence, where they found 41 Ecstasy pills, which Gayle admitted were his. The police also found a total of 36 vials of crack cocaine, 15 gelatin capsules of heroin, and three zip-loc bags of marijuana from the inside of vacant houses that Gayle and his co-defendant had been seen entering and exiting while conducting the hand-to-hand exchanges. According to the prosecutor, the officers' observations and the quantity of narcotics that they recovered indicated an intention to distribute heroin, not possession for personal use. The court found this evidence sufficient to convict Gayle, beyond a reasonable doubt, of possession with intent to distribute heroin.

On the second charge, the prosecutor recounted that less than a month later, on January 6, 2005, the police received information that Gayle was selling drugs out of a car in the same block as the vacant houses that he had been seen entering and exiting while conducting hand-to-hand exchanges. When the officers arrived at the location, Gayle jumped out of the car and fled. As Gayle fled, he discarded 60 gelatin capsules of heroin. When the police apprehended him, they found $1,586 in cash in Gayle's pocket. The

quantity of heroin and the amount of cash recovered indicated possession with intent to distribute heroin, not possession for personal use. The court found this evidence sufficient to convict Gayle, beyond a reasonable doubt, of possession with intent to distribute heroin.

In accordance with the terms of the guilty pleas, the court sentenced Gayle to two, concurrent two-year terms of incarceration.

C. Gayle's Federal Conviction

In 2009, a federal grand jury indicted Gayle on the charge of possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g). Because Gayle had at least three separate convictions for serious drug offenses (one from the 1999 plea and two from the 2006 plea), he was subject to a mandatory minimum penalty of 15 years (i.e., 180 months) of incarceration pursuant to the Armed Career Criminal Act, 18 U.S.C. § 924(e). In October 2009, a jury found Gayle guilty, and a federal judge sentenced Gayle to 210 months (or 17.5 years) in prison.

D. Coram Nobis Petition

On April 2, 2013, Gayle filed this petition for writ of error coram nobis, seeking to vacate all three convictions. He argued that he did not knowingly and voluntarily enter into any of his guilty pleas.

In denying Gayle's petition for a writ of error coram nobis, the circuit court observed that Gayle had not produced a transcript of the 1999 hearing or any other

evidence in support of his claims.[1] The court nevertheless addressed Gayle's bald claims and, assuming them to be true, concluded that he fell short of discharging his burden of proving that the 1999 plea was invalid.

The court went on to reject Gayle's claims with respect to the 2006 plea. Relying on *State v. Daughtry*, 419 Md. 35 (2011), the court determined that Gayle had freely and voluntarily pleaded guilty, that he had been adequately informed of the terms of the plea and its potential consequences, and that "the totality of the circumstances reflect that [Gayle] understood the nature of the charge[s] to which he pleaded guilty."

DISCUSSION

I. Coram Nobis Standards

"A petition for writ of error coram nobis is 'an equitable action originating in common law' . . . and not a belated direct appeal[.]" *Coleman v. State,* 219 Md. App. 339, 354 (2014) (quoting *Moguel v. State,* 184 Md. App. 465, 471 (2009)). It is an independent, civil action that a convicted person, who is neither serving a sentence nor on probation or parole, may bring to collaterally challenge a conviction. *Skok v. State*, 361 Md. 52, 65, (2000). The writ is an "extraordinary remedy" reserved only for "'compelling' circumstances.'" *Coleman*, 219 Md. App. at 353 (quoting *Skok*, 361 Md. at 72).

[1] Gayle later filed a "supplemental petition" in which he explained that he was unable to obtain the transcript because the original recording had been destroyed. Maryland Rule 16-818(d)(3)(iii) permits the destruction of such records after 12 years.

The Court of Appeals recently reiterated the constraints within which a coram nobis petitioner may seek this special form of relief:

> A convicted petitioner is entitled to relief through the common law writ of error coram nobis if and only if: (1) the petitioner challenges a conviction based on "constitutional, jurisdictional[,] or fundamental" grounds, whether factual or legal; (2) the petitioner rebuts the "presumption of regularity [that] attaches to the criminal case"; (3) the petitioner "fac[es] significant collateral consequences from the conviction"; (4) the issue as to the alleged error has not been waived or "finally litigated in a prior proceeding, [absent] intervening changes in the applicable law"; and (5) the petitioner is not entitled to "another statutory or common law remedy" (for example, the petitioner cannot be incarcerated in a State prison or on parole or probation, as the petitioner likely could then petition for post-conviction relief).

Jones v. State, 445 Md. 324, 338 (2015) (quoting *Rivera v. State*, 409 Md. 176, 191 n.6 (2009)).

The petitioner bears the burden of proof in a coram nobis proceeding. *Skok*, 361 Md. at 78.

II. Analysis

Gayle has demonstrated that he was eligible to petition for coram nobis relief. First, he was not incarcerated in this State or serving a term of probation or parole for the challenged convictions and thus had no alternative remedy to pursue. *See Skok*, 361 Md. at 80. Second, his stated ground for relief – that he did not knowingly and voluntarily tender his guilty pleas – was of a constitutional character. *See id*. at 80-81. Third, Gayle had not already litigated his claims, and he did not waive them by failing to apply for leave to appeal his convictions (*see* Md. Code (2001, 2008 Repl. Vol., 2014 Supp.), § 8-401 of the Criminal Procedure Article ("CP"); Md. Rule 15-1201, Cmte. Note) or by

not moving to withdraw his guilty plea or filing a petition for post-conviction. *Jones v. State*, 445 Md. 324, 338 (2015) (quoting *State v. Smith*, 443 Md. 572, 576 (2015)).[2]

Because Gayle was otherwise eligible to request coram nobis relief, the question before us is whether Gayle discharged his burden of showing that his convictions must be vacated because his guilty pleas were not voluntarily and knowingly given. We address each plea in turn.

A. 1999 Plea

In his brief, Gayle does not challenge the circuit court's ruling regarding his 1999 plea. Consequently, he has waived that issue. *See* Md. Rule 8-504(a)(6) (requiring briefs to contain "argument in support of the party's position on each issue"); *HNS Dev., LLC v. People's Counsel for Baltimore Cnty.*, 425 Md. 436, 459-60 (2012).

Even on the merits we would be in no better position than the circuit court to review the 1999 hearing, let alone to determine the voluntariness of Gayle's plea, as Gayle still has not produced a transcript, an audible recording, or any other evidence

[2] In its brief, the State argued that Gayle cannot meet his burden of demonstrating "significant collateral consequences" resulting from his guilty pleas and convictions. The State contends that Gayle cannot claim such consequences merely because his State convictions resulted in an enhanced sentence for his subsequent violations of federal criminal law. This Court has rejected the State's contention. *Parker v. State*, 160 Md. App. 672, 687-88 (2005) (holding that possibility of enhanced sentence in later criminal action because of prior conviction constituted "significant adverse consequence"); *accord Coleman*, 219 Md. App. at 347 n.4 (citing *Parker*, 160 Md. App. at 687-88).

besides a sketchy affidavit showing what occurred. In these circumstances, we have no adequate basis to conclude that his plea was in any way invalid.[3]

B. 2006 Plea

Gayle contends that his plea was involuntary because no one advised him of the elements of the crime to which he was pleading guilty. We disagree, because it is clear in the totality of the circumstances that he pleaded guilty with an understanding of the nature of the charges against him.

"'[I]n determining whether a guilty plea is voluntary under current Rule 4-242(c),[4] [the test] is whether the totality of the circumstances reflects that a defendant knowingly and voluntarily entered into the plea[.]'" *State v. Smith*, 443 Md. at 651 (citation omitted). In coram nobis cases concerning the validity of guilty pleas, "the only

[3] "[T]he doctrine of laches may, as an affirmative defense in a coram nobis action, bar an individual's ability to seek coram nobis relief." *Jones v. State*, 445 Md. 324, 343 (2015); *see also id.* (stating that the determination of whether laches bars a coram nobis petition requires a finding that an "individual unreasonably delayed before filing the petition" and that "the unreasonable delay prejudiced the opposing party"); *accord Moguel v. State*, 184 Md. App. 465, 471 (2009). Accordingly, the State suggested that the circuit court could have dismissed Gayle's challenge to the 1999 plea under the doctrine of laches. We need not address the applicability of laches in this case, however, as the State did not assert that defense below and, on appeal, presents no argument about why the 13-year delay was "unreasonable" or how the State was "prejudiced" as a result.

[4] Rule 4-242(c) states, in pertinent part:

> The court may not accept a plea of guilty, including a conditional plea of guilty, until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea.

issue is whether the defendant understood the nature of the charges[]" – and not, as is the case in direct appeals, whether the trial court conducted the plea hearing in strict compliance with Rule 4-242(c). *See Smith*, 443 Md. at 653-54.

"[I]t may be appropriate to presume that in most cases, defense counsel routinely explain the nature of the offense in sufficient detail to give the accused notice of what he [or she] is being asked to admit." *Henderson v. Morgan*, 426 U.S. 637, 647 (1976); *accord State v. Priet*, 289 Md. 267, 290 (1981). Nonetheless, that presumption does not apply if the record reflects nothing more than that the defendant was represented by counsel and that he or she had a generic discussion of the plea with with counsel. *Daughtry*, 419 Md. at 71. In those circumstances, a court should look to other factors, including the complexity of the charge, the defendant's personal characteristics, and the factual basis proffered to support the plea. *Id.* at 72 (quoting *Priet*, 289 Md. at 277).

When Gayle entered his pleas in 2006, he responded affirmatively to the circuit court's inquiry about whether he had had an opportunity to discuss his "case" and his "plea" with his attorney and that she had answered his questions to his satisfaction. It is not entirely clear whether that inquiry discloses more than a generic discussion of the plea. *See id.* at 70 (refusing to apply presumption that counsel explained nature of offense in sufficient detail to give defendant adequate notice when defendant affirmed only that he had "talked over [his] plea with [his] lawyer"); *compare Rivera v. State*, 180 Md. App. 693, 712 (2008) (applying presumption that counsel explained nature of offense in sufficient detail to give defendant adequate notice because defendant affirmed that he "had a chance to discuss the *charges* in [the] case, as well as the *terms* of [the]

plea; with [his] attorney") (emphasis added). Because it is unclear whether this record discloses more than a generic discussion of the plea between Gayle and his counsel, we shall look to the complexity of the charge, the defendant's personal characteristics, and the factual basis proffered to support the plea to determine the voluntariness of the plea. *Daughtry*, 419 Md. at 72.

"The more complex the charge, the more care the court must take to ensure the defendant understands the nature of the charges to which he or she is pleading guilty." *Gross v. State*, 186 Md. App. 320, 342 (2009). Nonetheless, "'[t]he nature of some crimes is readily understandable from the crime itself.'" *Daughtry*, 419 Md. at 72 (quoting *Priet*, 289 Md. at 288). Possession with intent to distribute is precisely such a crime. *Gross*, 186 Md. App. at 342; *accord Coleman*, 219 Md. App. at 357 (endorsing a circuit court's assertion that "possession with intent to distribute is so simple in meaning that it can be readily understood by a lay person").

The charge of possession with intent to distribute is simple and straightforward. *Gross*, 186 Md. App. at 342. Its elements are contained in the name of the offense itself. Because Gayle had previously been convicted of possession with intent to distribute (when he pleaded guilty in 1999), there is all the more reason to conclude that he understood the nature of the charges against him.

Gayle's personal characteristics confirm that he understood the nature of those charges. The record discloses that he was 26 years old at the time of the plea and that he had a ninth-grade education, could read and write, was not under the influence of drugs

or alcohol, had never been under psychiatric care, and said under oath that he understood the court's questions.

Finally, the factual bases for the pleas further confirm that Gayle understood the nature of the charges against him. In the first case, the police found 36 vials of crack cocaine and 15 gelatin capsules of heroin in the vacant houses that Gayle had been seen entering and exiting in the course of conducting hand-to-hand drug sales. In the second, Gayle discarded 60 gelatin capsules of heroin while fleeing from the police and, when apprehended, had $1,586 in cash in his pocket. From the recitation of the bases for the pleas, it is beyond any serious dispute that Gayle would have understood the nature of the simple and straightforward charges against him.

In accepting the plea in this case, the circuit court was not obligated to explain the precise elements of the offense (*Priet*, 289 Md. at 288), to deliver a lecture about the subtleties of the law of possession, or to detail every potential defense that Gayle might conceivably have had. Because it is clear from the totality of the circumstances that Gayle pleaded guilty with an understanding of the charges against him, the court correctly denied the petition for writ of error coram nobis.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. APPELLANT TO PAY ALL COSTS.